STATE OF MICHIGAN
IN THE SUPREME COURT

JESSICA A. DILLON,

Plaintiff/Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Appellant.

Supreme Court Case No. 153936

Court of Appeals Case No. 324902

Isabella County Circuit Court
Case No. 12-10464-NF

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Paul D. Hudson (P69844)
Miller, Canfield, Paddock and Stone, P.L.C.
277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007
(269) 381-7030
hudson@millercanfield.com
Attorneys for State Farm

Patrick A. Richards (P51373)
Daniel A. Iacco (P31658)
Gray, Sowle & Iacco PC
1985 Ashland Drive, Suite A
Mt. Pleasant, MI 48858
(989) 772-5932
Attorneys for Plaintiff/Appellee

_____/

STATE FARM'S SUPPLEMENTAL MOAA BRIEF

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JUDGMENT APPEALED FROM

Defendant-Appellant State Farm Mutual Automobile Insurance Company filed an application for leave to appeal from the Court of Appeals' May 3, 2016 decision, which affirmed the trial court's final judgment against State Farm dated November 12, 2014 and denial of State Farm's motion for summary disposition dated November 8, 2013. (App A, Court of Appeals Opinion; App B, Amended Judgment; App C, Opinion and Order on Plaintiff's Motion for Summary Disposition and Defendant's Motion for Summary Disposition.) On February 1, 2017, this Court directed the Clerk to schedule oral argument on whether to grant the application or take other action.

QUESTIONS PRESENTED FOR REVIEW

MCL 500.3145(1) provides that a plaintiff may not bring an action for recovery of no-fault benefits more than one year after the date of the automobile accident causing the injury unless (as relevant here) the plaintiff provides "written notice of injury" as provided in the statute within a year of the accident, including a description of the "nature" of the plaintiff's injury. Here, the plaintiff filed her action more than four years after her automobile accident and gave only oral notice of back and shoulder abrasions within one year of the accident, and no notice at all of the hip injury for which she actually sought recovery of benefits from State Farm.

The Court directed the parties to file supplemental briefs addressing two issues:

(1) the extent to which an injury must be described in order to provide notice of injury under MCL 500.3145; and

(2) whether the plaintiff or someone on her behalf provided written notice as required by MCL 500.3145.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Suppose a plaintiff injures her big toe in a car accident. She calls her insurance company and says, "I hurt my big toe in the accident," and she gets medical treatment for the toe. A year goes by. Four years go by. Then the plaintiff starts getting treatment for an elbow injury, and she now claims the elbow injury came from the car accident as well. She asks her insurance company to pay for medical treatment for the elbow. Does she have a viable claim?

That's the issue here, with shoulders and hips instead of elbows and toes. MCL 500.3145(1) provides that an action for recovery of no-fault benefits "may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident." The statute then goes on to provide that the plaintiff's written notice of injury must contain certain specific information to be effective: "The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury." MCL 500.3145(1).

Here, following an automobile accident in August 2008, Plaintiff gave State Farm oral notice (by voicemail) of road-rash injuries to her shoulder and back, and did not report any other injuries of any kind. Then four years went by and she filed a lawsuit seeking recovery of benefits for an injury to a completely different body part—her hip. This Court directed the parties to address whether Plaintiff's notice was sufficient under MCL 500.3145(1), and specifically (1) "the extent to which an injury must be described in order to provide notice of injury under MCL 500.3145(1)," and (2) "whether the plaintiff or someone on her behalf provided written notice as required by MCL 500.3145." (Feb 1, 2017 Order.)

1. Notice of Injury. State Farm submits that the plain language of the statute answers the first question. In the notice of injury, the plaintiff must describe, "in ordinary language," the "nature of his injury." This is not an onerous burden: If a plaintiff injures her hip in the car accident, she can write, "I injured my hip." If she injures her shoulder, she can write, "I injured my shoulder." That's it. If the plaintiff describes the nature of her injury in writing in these simple terms (and meets the other modest requirements set forth in the statute, such as giving her address and the time and place of the accident) at any point within a full *year* of the accident, she may proceed with her claim for recovery of benefits for her injury.

But what the statute does not permit is what the Court of Appeals permitted here. Nothing in the plain language of MCL 500.3145(1) suggests that a plaintiff can meet the "notice of injury" requirement by giving notice of an injury to a *completely different body part* than the one for which the plaintiff actually seeks recovery of benefits. The most natural reading of Section 3145(1) is that it requires a description of the actual injury for which the claimant seeks to recover benefits; it would be quite an unnatural reading to assume that a claimant could meet the requirement by describing the nature of some *other* injury. After all, if one asked a person to "indicate in ordinary language the nature of your injury," it would be quite strange for the person to respond, "I hurt my shoulder," when the person really hurt her hip. And it would be quite strange to assume that someone had notice that the person hurt her shoulder when she said she hurt her back. Indeed, under the Court of Appeals' holding, a plaintiff could give notice that she suffered a big toe injury in an automobile accident, wait 20 years and claim that she had also suffered a traumatic brain injury in the accident, and that action would still not be barred by MCL 500.3145(1). Nothing in the text of Section 3145(1) suggests it compels that bizarre result,

and nothing in the plain text suggests that a plaintiff can proceed under the sort of hip-bone's-connected-to-the-shoulder-bone reasoning that the Court of Appeals employed here.

The Court of Appeals fixated on the lack of the definite article "the" in the phrase "notice of injury"—which the court called "conspicuously absent"—and took this to mean that "the Legislature was not referring to a definite or particular injury." (Slip Op at 3.) But the court ignored the fact that the phrase the Legislature actually used was "written notice of injury *as provided herein*," meaning as specifically provided in the statute, which expressly requires several specific items for the notice to be effective, including a description of the "nature" of the plaintiff's injury. The Court of Appeals also ignored the entire predicate for the "notice of injury" language, which expressly refers to "*the* accident causing *the* injury." That's what this statute is all about: whether a plaintiff may file an action for recovery of no-fault benefits for "the injury" she suffered in an accident more than a year after the date of the accident causing "the injury." And indeed, this Court recently held that the limitations period is not extended unless the insurer has "either received notice of *the injury* within one year or has made a payment of no-fault benefits for the injury at any time before the action is commenced." *Jesperson v Auto Club Ins Ass'n*, 499 Mich 29; 878 NW2d 799 (2016) (emphasis added). Thus, this Court did *not* view the lack of a definite article in the phrase "notice of injury" as significant or "conspicuously absent." In short, Plaintiff failed to meet the basic requirement of providing a description of the nature of her hip injury within a year of the accident, thus her action to recover benefits for that injury is barred by the plain language of MCL 500.3145(1).

2. Written Notice. State Farm submits that the answer to this Court's second question—whether the plaintiff or someone on her behalf provided "written" notice as required by the statute—is even more straightforward. Written notice means written notice; and Plaintiff

provided only oral notice. It is *undisputed* that there is no written document anywhere in the record that Plaintiff sent to State Farm within one year of her accident that contains a description of the nature of *any* injury—hip, back, shoulder, or anything else. Plaintiff's only purported notice was oral—by voicemail—not in writing. The Court of Appeals glossed over the "written" notice requirement entirely, and the Plaintiff argues only that "strict, technical compliance with the requirement of written notice" is not required. (Resp to App for Leave at 15.) This Court should reject that argument out of hand—when the Legislature says written notice is required, written notice is required.

If the Court of Appeals' decision stands, the Legislature's express "written" notice requirement is read right out of the statute, as is the Legislature's express requirement that the written notice must contain a description of the "nature" of the claimant's injury to extend the statute of limitations for an action to recover benefits for that injury. State Farm respectfully requests that the Court vacate the Court of Appeals' decision and remand to the trial court with instructions to grant judgment to State Farm. Plaintiff's action is barred by the plain one-year limitation of MCL 500.3145(1).

STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS

I. Relevant Facts

In August 2008, Plaintiff Jessica Dillon was struck by a motor vehicle while she was crossing the street. Her mother left a voicemail with a State Farm representative on September 16, 2008 and reported that Dillon had suffered "road rash on back, left shoulder, low back." (Ex F to State Farm's COA Brief.) She did not report any injury to Dillon's hip or anything else. (*Id.*) State Farm opened a file and wrote a letter to Dillon stating that it had received her claim. (Ex 3 to Plaintiff's COA Brief.) The letter contained an "Authorization for Release of Information" form, which Dillon signed and returned on September 27, 2008. (Ex 4 to

Plaintiff's COA Br.) This document was a medical release only, and did not describe any injury. (*Id.*) This was the only written document State Farm received from Dillon within one year of the accident. Ultimately, Dillon's health insurer paid the emergency-room bills relating to Dillon's road-rash injuries, so State Farm did not end up paying any benefits to Dillon relating to the accident.[1]

Three years went by. Then, in December 2011, Dillon sought treatment for left hip pain, and for the first time claimed that the injury arose from the 2008 accident. (Exs I, L to State Farm's COA Br.) Dillon had seen doctors periodically since the accident, but had never claimed any hip injury arising from the 2008 accident. (Exs G, H to State Farm's COA Br.) On March 7, 2012, Dillon had surgery to repair a left anterosuperior quadrant labral tear/detachment in her hip. (Ex Q to State Farm's COA Br.) She did not provide any records relating to a hip injury to State Farm until 2012, four years after the accident. She nonetheless claimed the hip injury arose out of the 2008 accident, and sought no-fault benefits from State Farm.

State Farm denied the claim on the ground that the claim was barred by the one-year statute of limitations of MCL 500.3145(1). Dillon thereafter filed suit in the Isabella County Circuit Court on December 12, 2012—more than four years after the accident in August 2008.

II. The Trial Court's Decision

State Farm and Dillon filed cross-motions for summary disposition, and the trial court denied State Farm's motion and granted Dillon's in part on November 8, 2013. (App C, Opinion and Order on Plaintiff's Motion for Summary Disposition and Defendant's Motion for Summary

[1] The Court of Appeals opinion states that "Defendant made payments related to those injuries," meaning the back and shoulder road-rash injuries, but this is incorrect. Plaintiff did not submit any bills to State Farm for reimbursement following the accident (including any bills for her road-rash injuries, which were covered by her health insurer), and State Farm did not make *any* payments to Plaintiff, for any injury. There is no evidence in the record to the contrary.

Disposition.) The trial court held that Dillon's mother's oral voicemail notice on September 19, 2008 that Dillon had suffered road-rash injuries to her back and shoulder was sufficient to satisfy MCL 500.3145(1) as to Dillon's claim for benefits relating to an injury to her hip. Specifically, the court held:

> In this case, plaintiff was struck by the vehicle on August 22, 2008. Plaintiff's mother notified defendant of the accident [by voicemail] on September 19, 2008. Defendant created a note in its file that listed plaintiff's name, the time and place of automobile accident in which plaintiff was injured, and described her injuries as "road rash on back" and "left shoulder, low back." Thus, this court finds that plaintiff provided written notice to defendant "of injury" within one year of the accident.

(*Id.* at 3.) The trial court reasoned that, "[a]lthough defendant claims that plaintiff failed to file her notice as to the hip injuries, this court finds that the statute merely mandates that the insured provide notice 'of injury,' not notice of the injury or every particular injury the insured may endure. Thus, this court finds that when plaintiff filed her notice of injury in 2008, she filed timely notice for the hip injury." (*Id.* at 4.)

The case thereafter proceeded to trial, where a jury awarded judgment to Dillon of nearly $400,000. (App B, Amended Judgment.) State Farm timely appealed, arguing that the case had no business going to trial and that the judgment should be vacated because Dillon's action was plainly barred by MCL 500.3145(1).

III. The Court of Appeals Decision

The Court of Appeals (Sawyer, J., joined by Murphy and Krause, JJ.) affirmed in a published decision on May 3, 2016. The Court held that Dillon's (oral) notice within one year of the accident that she suffered physical injuries of *any* kind was "sufficient to satisfy the statute." (Slip Op. at 4.) The Court rejected State Farm's argument "that the notice of injury must have specified injury to plaintiff's left hip" to comply with MCL 500.3145(1). (*Id.*)

The Court of Appeals placed heavy reliance on the Legislature's use of the phrase "notice of injury" as opposed to notice of "*the* injury." (Slip Op. at 3.) The court "contrast[ed] the phrase 'notice of injury' with the phrase 'benefits for the injury.'" (*Id.*) "In the first phrase, which describes the notice that must be given to relax the application of the one-year back rule, the use of the definite article 'the' is conspicuously absent." (*Id.*) And "[t]he fact that the Legislature uses it later in the same sentence suggests that it was not mere oversight or poor grammar." (*Id.*) Instead, "[t]he fact that the Legislature omitted its use before the word 'injury' in 'notice of injury' indicates that the Legislature was not referring to a definite or particular injury." (*Id.*)

Thus, concluded the Court of Appeals, "if the Legislature intended for the 'notice of injury' to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that 'notice of *the* injury' must be given." (*Id.* at 3.) The Court believed that the last sentence of the statute—which requires the claimant to indicate the "nature" of his or her injury in the notice—supported this reading, because dictionary definitions of "nature" provide "reference to the general, not the specific." (*Id.* at 4.) "Accordingly, we reject defendant's argument that the notice of injury must have specified injury to plaintiff's left hip. The fact that they received notice that she suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute." (*Id.*) The Court of Appeals thus concluded that "because plaintiff gave notice of injury within one year of the accident, § 3145(1) allows her to recover personal protection insurance benefits for any loss incurred within one year of the commencement of the action." (*Id.*)

STANDARD OF REVIEW

This Court reviews de novo the Court of Appeals' and trial court's interpretation of a statute, including the statute-of-limitations provisions of MCL 500.3145(1). *Jesperson v Auto*

Club Ins Ass'n, 499 Mich 29, 34; 878 NW2d 799 (2016). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574, 577 (1999). Courts "must give the words of a statute their plain and ordinary meaning." *Id.* at 248-49.

"This Court has prided itself on its commitment to the rule of law, and in particular a return to fundamental constitutional principles regarding judicial interpretation of statutes." *Progressive Michigan Ins Co v Smith*, 490 Mich 977, 979-80 (2011) (Young, J., concurring). One of those fundamental principles is that statutes are enforced "as written," *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686, 690 (2001), and that when a statute as written clearly and unambiguously requires certain specific action, "close enough" is not good enough. *Progressive*, 490 Mich at 978.

With respect to Section 3145(1) in particular, this Court in recent years has repeatedly "reaffirm[ed] the Legislature's prerogative to set policy and [the Court's] long-established commitment to the application of statutes according to their plain and unambiguous terms to preserve that legislative prerogative." *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 581; 702 NW2d 539 (2005). To preserve the legislature's prerogative to set policy, a court may not "legislate[] from the bench," "craft[] its own amendment to § 3145(1)," or "import[] its own policy views into the text of § 3145(1)." *Id.* at 582. Statutory language "must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of" the judiciary. *Id.* In short, "MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written." *Id.* at 586.

ARGUMENT

I. The Court Should Reverse the Court of Appeals' Decision to Enforce the Plain Text of MCL 500.3145(1): The Statute Requires Written Notice of the Nature of the Injury for Which the Plaintiff Seeks Recovery of Benefits

A. The Statute and What It Requires

MCL 500.3145(1) is the statute of limitations applicable to all no-fault actions in Michigan, and "[t]he language of the statute was intended as a limitation on actions for personal benefits arising under the No-Fault Act with a mechanism for extending the one year period upon filing of notice within the year." *Davis v Farmers Ins Co*, 86 Mich App 45; 272 NW2d 334 (1978). The plain language of MCL 500.3145(1) thus provides that a plaintiff may not commence an action "later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident," or unless the insurer has previously made a payment for the injury. *See Jesperson*, 499 Mich at 39 (Section 3145(1) "allows for an action for no-fault benefits to be filed more than one year after the date of the accident causing the injury if the insurer has either received notice of the injury within one year of the accident or has made a payment of no-fault benefits for the injury at any time before the action is commenced").

Here, State Farm did not make any payments to Plaintiff, so only the "written notice of injury" exception is at issue. It is also undisputed that Plaintiff commenced her action more than one year after the accident (more than four years, in fact), so Plaintiff's action can survive only if she meets the "written notice of injury" exception of Section 3145(1). MCL 500.3145(1) provides in full:

> **An action for recovery of personal protection insurance benefits** payable under this chapter for accidental bodily injury **may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident** or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. **The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.** (Emphasis added.)

Thus, the plain language of the statute expressly requires that the notice of injury be "written," and that the written notice contain several elements, including a description of the "nature" of the plaintiff's injury, to be effective to extend the one-year limitations period. If the notice does not satisfy all of these elements, the notice is insufficient to extend the statute of limitations.[2]

B. The Plaintiff's Action Is Barred by MCL 500.3145(1) Because Plaintiff Did Not Provide Written Notice Indicating the "Nature" of the Injury for Which She Sought No-Fault Benefits

The Court of Appeals held that Plaintiffs' providing notice of shoulder and back injuries was sufficient to give notice of a hip injury under MCL 500.3145(1). The Court of Appeals held that notice of "some injury," any injury, was sufficient, and that because the Plaintiff provided notice of "some" injury—the road-rash injuries—"§ 3145(1) allows her to recover personal protection insurance benefits for *any* loss[.]" (Slip Op at 3-4; emphasis added; *see also id.* at 4:

[2] See, *e.g.*, *Rowland v Washtenaw Cty Rd Com'n*, 477 Mich 197, 219; 731 NW2d 41 (2007) (with respect to an analogous statute, "the statute requires notice to be given as directed" in the statute, including by "specif[ying] the exact location and nature of the defect [and] the injury sustained").

"The fact that [State Farm] received notice that she suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute.") The Court of Appeals hinged its reading on the lack of the definite article "the" in the phrase "notice of injury." The Court reasoned that "[t]he fact that the Legislature omitted its use before the word 'injury' in 'notice of injury' indicates that the Legislature was not referring to a definite or particular injury," and "if the Legislature intended for the 'notice of injury' to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that 'notice of *the* injury' must be given." (Slip Op at 3.)

But this overlooks the fact that the actual phrase in the statute does not end at "written notice of injury." The phrase instead requires claimants to give "written notice of injury *as provided herein*"—meaning as provided in the statute. The statute then goes on to provide that the notice must contain several *specific elements* to be effective: "The notice shall give [1] the name and [2] address of the claimant and indicate in ordinary language [3] the name of the person injured and the [4] time, [5] place and [6] nature of his injury."

Each of these requirements is mandatory, as provided by the "shall" in this sentence. This means it is *not* sufficient for a claimant simply to provide the time and date of the accident. It is not sufficient for the claimant to provide "notice that she suffered physical injuries in a motor vehicle accident," which is what the Court of Appeals held was "sufficient to satisfy the statute" here. (Slip Op at 4.) And it is not sufficient for a claimant simply to provide "timely notification that an accident occurred which involved injury," as Plaintiff argues. (Appellee's Resp to App for Leave at 25.) The Legislature expressly required more: The claimant must also indicate "the . . . *nature* of his injury." This description can be in "ordinary language" as opposed to technical medical language ("I hurt my hip" vs. "I suffered a left anterosuperior

quadrant labral tear/detachment"), but there must be a description of the nature of the claimant's injury in the notice for it to comply with the terms of the statute and thereby extend the one-year statute of limitations.

The Court of Appeals' reading makes the "nature of his injury" requirement superfluous. Why would the Legislature include language requiring the insured to indicate the "nature of his injury" if all the insured had to do was say he "suffered physical injuries in a motor vehicle accident"? (Slip Op at 4.) That would be covered by the "name of the person injured" and "time" and "place" requirements of the statute (elements [3], [4], and [5] above), so the "nature of his injury" requirement (number [6]) would be surplusage. This Court "must avoid an interpretation that renders [statutory text] all but surplusage." *Jesperson*, 499 Mich at 36.

Nor does notice of a shoulder injury give notice of a hip injury. The most natural reading of MCL 500.3145(1)'s "nature of [plaintiff's] injury" requirement is that it requires a description of the actual injury for which the claimant seeks to recover benefits. As noted above, it would be quite an unnatural reading to assume that a claimant could meet the requirement by describing the nature of some *other* injury. Indeed, if one asked a person to "indicate in ordinary language the nature of your injury," it would be quite strange for the person to respond, "I hurt my shoulder," when the person really hurt her hip. And it would be quite strange to assume that someone had notice that the person hurt her shoulder when she said she hurt her back.

Other language in the statute makes this reading inescapable. In addition to ignoring the words immediately following "written notice of injury" ("as provided herein"), the Court of Appeals also ignored the words immediately preceding that phrase. The Court of Appeals fixated on the lack of the word "the" in "notice of injury," but forgot to read three words back, where the statute expressly says, "*the* accident causing *the* injury." That's the whole point of this

statute: whether a plaintiff may file an action for recovery of no-fault benefits for "the injury" she suffered in an accident more than a year after the date of the accident causing "the injury." Here again the article *is* definite—it refers to "the injury," meaning the one suffered in "the accident," not "an" injury or "some" injury—and this strongly suggests that the relevant injury referred to in the statute is "the injury" for which the claimant seeks recovery of no-fault benefits. That is the entire predicate for the notice exception: "*An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury* unless written notice of injury as provided herein" has been provided. MCL 500.3145(1) (emphasis added).

Thus a plaintiff may not file an action for recovery of benefits "for accidental bodily injury" more than one year after the date of the accident causing "the injury"—meaning the injury for which she seeks recovery of benefits for accidental bodily injury—unless the plaintiff gives written notice of that injury as provided in the statute within one year of the accident. The fourth sentence then puts a bow on this plain reading of the statute: the "notice of injury required by this subsection" may be given to the insurer by "a person claiming to be entitled to *benefits therefor*"—meaning benefits relating to the notice of injury. All of these textual clues strongly suggest that the notice of injury must relate to the injury *for which the plaintiff seeks recovery of no-fault benefits*, and not some other injury.

In short, the plain reading of the statute is that the claimant must give written notice of the injury for which he or she is seeking recovery of benefits, not of some other injury, to extend the one-year statute of limitations for recovery of benefits relating to that injury. There is strong textual support for this reading, and extremely weak textual support for the Court of Appeals'

contrary reading. Plaintiff here failed to indicate in ordinary language in her notice of injury the "nature" of her hip injury—the injury for which she actually sought recovery of benefits from State Farm. Thus, Plaintiff's notice of shoulder or back road-rash injuries was not sufficient to provide notice of her hip injury for purposes of Section 3145(1). Plaintiff's failure to comply with the plain language of MCL 500.3145(1) means that her late-filed action is barred by the statute of limitations.

C. Plaintiff's and the Court of Appeals' Reading of the Statute Runs Counter to this Court's Express Holding in *Jesperson*

Indeed, Plaintiff's and the Court of Appeals' reading of MCL 500.3145(1) is directly contrary to this Court's unanimous holding in *Jesperson*. Under their reading, all a plaintiff has to do is provide notice of "some" injury within one year of the accident, and then this will permit a plaintiff to file an action four years, ten years, twenty years later, relating to "*any*" other injury. (Slip Op at 4; emphasis added.) As noted above, both Plaintiff and the Court of Appeals pin this reading almost entirely on the lack of the definite article "the" in "notice of injury" in the statute, which they argue suggests that the statute is not referring to any specific injury. (*See* Plaintiff's Resp to App at 19: "If MCL 500.3145 had been written with "*the*" injury as opposed to how it is written with the words '*of injury*' State Farm's position would be valid"; Slip Op at 3: calling the word "the" "conspicuously absent.")

But that is not how this Court recently read the statute in *Jesperson v Auto Club Ins Assoc*, 499 Mich 29; 878 NW2d 799 (2016). The Court there expressly (and unanimously) held that a plaintiff must give "notice of *the* injury":

> We hold that the first sentence of MCL 500.3145(1) allows for an action for no-fault benefits to be filed more than one year after the date of *the accident causing the injury* if the insurer has either received *notice of the injury* within one year of the accident or has made a payment of no-fault benefits for the injury at any time before the action is commenced.

Jesperson, 299 Mich at 39 (emphasis added).

Plaintiff brushes this off as "merely dicta," because the primary issue in the case was interpretation of the "payment" exception in MCL 500.3145(1), rather than the "notice" exception. (Appellee's Resp to App at 24.) But this certainly was not dicta. After all, the sentence begins: "*We hold . . .*" *Jesperson*, 299 Mich at 39 (emphasis added). Sometimes the line between dicta and controlling language is hard to define; but here it is not. State Farm is aware of no case, ever, where a sentence that begins "we hold" was considered dicta.

State Farm is thus not attempting to "add words" into the statute, as Plaintiff suggests. (Appellee's Resp to App at 19.) Rather, as this Court held in *Jesperson*, the fair and reasonable reading of MCL 500.3145(1) is that it requires a plaintiff to give written notice of *the injury* for which she seeks to recover benefits in her lawsuit, including a description of the nature of that injury, in order to extend the one-year statute of limitations. Plaintiff failed to do so here, and thus her action is barred by MCL 500.3145(1).

The Court of Appeals did not cite *Jesperson* anywhere in its opinion. This is a striking omission—this Court announced an express holding interpreting the exact statutory provision at issue in this case just a month and a half before the Court of Appeals issued its decision, yet the Court of Appeals never mentioned it once. The Court of Appeals' failure to mention, distinguish, or explain this Court's guidance provides another strong basis for review and reversal by this Court.[3]

[3] The Court of Appeals also brushed away a host of other cases that support State Farm's reading of the statute and run counter to the Court of Appeals' reading. *See, e.g.*, *Devillers*, 473 Mich 562, ("a no-fault action to recover PIP benefits may be filed more than one year after the accident and more than one year after *a particular loss has been incurred* (provided that notice of injury has been given to the insurer or the insurer has previously paid PIP benefits for the injury)"); *Ross v Allstate Ins Co*, No. 245165, 2004 WL 435393, at *3 (Mich App Mar 9, 2004) ("The plain language of the statute mandates that *the* nature of *the* injury must be indicated for

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D. Plaintiff's Remaining Arguments Fail

Plaintiff argues that it would be unfair to require her to describe "each and every conceivable injury caused by the accident whether she knew of the connection or not," because "often the specific cause of certain injuries is not manifested within one year." (Appellee's Resp to App at 9, 11.) But this was the Legislature's judgment to make, and the Legislature decided that one year was a reasonable compromise that would permit the vast majority of legitimate claimants to recover while protecting insurers (and thus their customers by way of premiums) from stale or fabricated claims.

Indeed, while it is not the courts' role to second-guess this "one-year" judgment, this seems like an eminently sensible line to draw. After all, most injuries from a traumatic event like a car accident will be quite evident *immediately* after the accident, and nearly all will manifest themselves in the weeks and months that follow. It would be the exceptionally rare injury that lay dormant for over a year, and the Legislature appropriately determined that the benefits of foreclosing such claims outweighed the costs. See *Auto Club Ins Ass'n v New York Life Ins Co*, 440 Mich 126, 139; 485 NW2d 695 (1992) (Section 3145(1) is a critical component of a "comprehensive legislative scheme with the goal" of "protecting no-fault insureds by requiring the prompt payment of claims" while "protect[ing] no-fault insurers against stale claims.")

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the defendant to be properly notified. Michigan courts have consistently held that providing notice of *an* injury is insufficient to provide the insurer with a basis for evaluation of a claim. A claim for *specific benefits* must be submitted. Notice must be *specific enough to inform the insurer of the nature of the loss*."); *Cunningham v Auto-Owners Ins Co*, No. 259521, 2006 WL 2355509, at *2 (Mich App Aug 15, 2006) ("the statute requires that the insurer be put on *notice of a specific injury, not just of a general claim*"). State Farm cites these latter two unpublished decisions because they are directly on point and demonstrate a conflict in the Court of Appeals' decisions warranting resolution by this Court.

As with any statute of limitations, there is an inherent issue of fairness at the margins—why should someone who gives notice a year and a day after the accident be treated differently from someone who gave notice a year minus a day? But Legislatures must draw lines somewhere, and when the Legislature draws the line at a year, a court's duty is to enforce that line as written, not to substitute its own judgment about what a fair line would be in each particular case. *See Devillers*, 473 Mich at 586 ("MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written").

Plaintiff next argues that State Farm somehow "waived its right to assert the insufficiency of the notice," because "[a]t no time did [State Farm] ever indicate to the Plaintiff that without additional information they were unable to appropriately evaluate the claim." (Appellee's Resp at 16.) But that turns the notice requirement on its head. How could State Farm request "additional information" about an injury Plaintiff never mentioned, and that Plaintiff claims *she* didn't even know about until three or four years later? Under the plain and unambiguous language of MCL 500.3145(1), it was the *Plaintiff's* obligation to provide the required notice of injury as set forth in the statute. *See* MCL 500.3145(1). It was not State Farm's obligation to guess as to other injuries that the Plaintiff might someday have. *See id.*[4]

Plaintiff also argues that her insurance policy with State Farm "only requires that information be provided as soon as reasonably possible after treatment for the injury," not necessarily within one year of the injury. (Appellee's Resp to App at 17.) But as State Farm

[4] Plaintiff also argues that State Farm's adjuster "admitted that notice of injury was provided by Ms. Dillon within one year." (Appellee's Resp to App at 18.) But the passage Plaintiff quotes plainly shows that the adjuster testified that notice of *an* injury was provided within one year—the road-rash injuries—but not notice of the hip injury for which Plaintiff actually sought recovery of benefits. (*See id.* at 19, quoting Pierce dep at p. 51.)

showed in its application, the policy requirements and the statute-of-limitations requirements are independent, and the Plaintiff must meet both to have a viable claim. (*See* Application at 18 n 7.) In other words, even if the Plaintiff could show that she met the *contractual* notice requirements set forth in her policy, her claim would still fail because she plainly did not meet the Legislature's statutory requirements of MCL 500.3145(1).

At bottom, Plaintiff's notice of road-rash injuries was not sufficient to provide notice of her hip injury under the plain language of MCL 500.3145(1). The notice of road-rash injuries therefore did not extend the one-year statute of limitations for Plaintiff's action to recover benefits for a hip injury, and Plaintiff's action is barred by MCL 500.3145(1).[5]

II. Written Notice Means Written Notice: The Plaintiff's Action Is Barred Because She Did Not Provide "Written" Notice of Injury Within One Year of Her Accident

The second question the Court asked the parties to address is "whether the plaintiff or someone on her behalf provided written notice as required by MCL 500.3145." (Feb 1, 2017 Order.) The clear answer to that question is no. It should go without saying that *oral* notice does not satisfy a *written* notice requirement. But not only did Plaintiff's notice of injury fail to describe the nature of her hip injury, as required by MCL 500.3145(1), but she provided *no written notice at all*. The only notice she provided was oral—by voicemail.[6]

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[5] Plaintiff also asserts that trial testimony and State Farm's claim file "suggest" that benefits were paid related to the road-rash injuries. (Appellee's Response at 2 n 1, 5.) This is incorrect—as noted above, no payments were made, and there is no evidence in the record to the contrary. It is also immaterial—no party argues that the "payment" exception applies in this case, and the Court of Appeals did not hold otherwise.

[6] Contrary to Plaintiff's argument, State Farm preserved this argument below and presented it to the Court of Appeals in its appeal brief. In both courts, State Farm expressly argued that MCL 500.3145(1) permitted an action to be filed more than one year after the accident "***only if written notice***" is provided, and "as this did not occur, Plaintiff's claim is barred by MCL 500.3145." (App A, Brief in Support of Defendant's Motion for Summary Disposition, p. 12; App B, Appellant's Br. at 11, 12; emphasis in original.) State Farm further argued that it was

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The Court of Appeals did not identify any writing in the record that could satisfy the "written notice of injury" requirement. The Court glossed over the requirement entirely. The Court said Dillon's "initial complaints were of upper and lower back pain and various abrasions," but the Court did not mention that even these complaints were oral only—by voicemail from Dillon's mother on September 19, 2008. Yet the Court of Appeals held that these oral "initial complaints" of other injuries in 2008 were "sufficient to satisfy the statute." (Slip Op at 1, 4.) Plaintiff likewise has not identified any writing dated within one year of the accident that she claimed met the "written notice of injury" requirement. Plaintiff argues instead that "strict, technical compliance with the requirement of written notice" was not required. (See Appellee's Resp to App for Leave at 10.)

The Legislature's requirement that a plaintiff's notice of injury be "written" was not a suggestion. Written means written. This Court for years has railed against relaxing the statute-of-limitations provisions implemented by the Legislature in Section 3145(1). As this Court stated in *Devillers*, "MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written." 473 Mich at 586. And as written, MCL 500.3145(1) clearly and unambiguously provides that the plaintiff's notice of injury must be "written," not oral. Indeed, if it were not already crystal clear in the plain text of

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"undisputed that Plaintiff failed to give State Farm ***any*** notice, let alone ***written*** notice, of a left hip injury until more than one year after her motor vehicle accident." (*Id.*; emphasis in original.) And State Farm further argued that "[e]ven allowing Plaintiff to escape the ***written*** notice requirement of MCL 500.3145, Defendant, State Farm, did not receive ***verbal*** notice that Plaintiff had been having problems with her left hip until her mother left a voicemail message with Defendant on February 27, 2012, nearly three and a half years after the accident." (*Id.*; emphasis in original.) State Farm has consistently and repeatedly argued throughout this case that Plaintiff's notice of injury was deficient for two reasons, either of which bar her action: (1) the notice was oral, not written; and (2) the oral notice failed to give notice of the actual injury for which she sought recovery of benefits from State Farm.

the statute itself, this Court just last term *expressly* stated that the notice must be in writing and that oral notice is not sufficient: "MCL 500.3145(1) *requires the notice to be in writing*[.] Therefore, if the insured, for example, provided the insurer with only *oral* notice of the injury within one year of the accident . . . *the notice exception would not apply because written notice had not been provided*[.]" *Jesperson*, 499 Mich at 37 n4 (emphasis added).

The only written document in the record that Plaintiff provided to State Farm within one year of the accident was an "Authorization for Release of Information," which, as its name suggests, was simply a form authorizing the release of her medical information. (Ex 4 to Plaintiff's COA Br.) The form contained Plaintiff's name and the date of the accident, but did not describe or reference *any* injury of any kind—not to her back, shoulder, hip, or anything else. The form therefore did not "indicate in ordinary language" (or any language) the "nature of [her] injury" (or the "place" of her injury) and therefore did not comply with the plain language of Section 3145(1). This form therefore could not have satisfied the "written notice of injury" requirement of the statute, even if the Plaintiff or the Court of Appeals had relied on it.

Plaintiff argues that her oral notice somehow satisfied the "written" notice requirement of MCL 500.3145(1) because, even though *she* did not provide written notice, her oral notice was "memorialized in writing by the adjuster" at State Farm. (Appellee's Resp to App at 3, 5; see Appellee's COA Br at 14: "Ms. Dillon gave timely notice in 2008 when State Farm Insurance[] received notice from its agent of the accident, took the telephone call from Jessica's mother indicating that Jessica had been in a motor vehicle accident, and had injured her low back and shoulder and recorded those statements in writing in the file.") Plaintiff argues that "there should be no difference between the adjustor, Denise Pierce, transcribing the report into written form versus one of the Dillons." (*Id.* at 23.)

But it is the *statute* that draws this distinction. The statute clearly and unambiguously states that the written notice must be "given *to* the insurer" "*by* a person claiming to be entitled to benefits therefor, or by someone in his behalf." MCL 500.3145(1) (emphasis added). The statute does not say that a plaintiff's oral notice is somehow sufficient if it is "memorialized in writing" by the insurer. This is precisely the sort of "close enough" argument that this Court has repeatedly rejected. *Progressive*, 490 Mich at 978.[7] MCL 500.3145(1) expressly requires "written" notice by the plaintiff, and this requirement must be enforced "as written." *Wickens*, 465 Mich at 60.[8]

The lack of any written notice of injury should have ended the Court of Appeals' inquiry. Without a writing submitted by the plaintiff to State Farm within one year of the accident indicating the nature of *any* injury, the required specificity of the non-existent written notice is beside the point. In other words, this is not a case where the plaintiff gave written notice of one injury (like one to her back or shoulder) and the question is whether that written notice was

[7] The cases Plaintiff cites in favor of this close-enough, "substantial compliance" argument further highlight the need for this Court to reverse the Court of Appeals' decision and confirm that this sort of "close enough" compliance is not sufficient to meet clear statutory requirements. *See Dozier v State Farm Mut Auto Ins Co*, 95 Mich App 121 (1980); *Lansing Gen Hosp Osteopathic v Gomez*, 114 Mich App 814 (1982); *Walden v Auto-Owners Ins Co*, 105 Mich App 528 (1981).

[8] Nor is it relevant whether State Farm had some sort of constructive or actual notice of a claim or whether State Farm was prejudiced by the lack of notice. Section 3145(1) is a statute of limitations provision, not merely a notice provision. "Notice provisions have different objectives than statutes of limitation," and courts have held that whether a defendant was "prejudiced by the lack of notice" is sometimes relevant in analyzing pure notice provisions. See *Davis*, 86 Mich App at 47-48. Not so with statutes of limitation like Section 3145(1), which "are intended to prevent stale claims and to put an end to fear of litigation," and bar plaintiffs' untimely claims without regard to whether the defendant suffered prejudice from the lack of notice. See *id.*; see also *Rowland*, 477 Mich at 197 (with respect to an analogous notice statute, "the statute requires notice to be given as directed" in the statute, including by "specif[ying] the exact location and nature of the defect [and] the injury sustained," "no matter how much prejudice is *actually suffered*").

sufficient to extend the statute of limitations as to another injury (like to her hip). She gave no written notice indicating the nature of *any* injury, and that failure bars her claims under the plain language of MCL 500.3145(1).

In the end, there is no getting around the fact that there is no written document in the record sent by the Plaintiff to State Farm within one year of the accident describing the nature of *any* injury. It simply does not exist, and thus Plaintiff could not possibly have satisfied the "written" notice requirement of MCL 500.3145(1). Because this is such a blatant example of the Court of Appeals failing to follow the plain language of the statute, peremptory reversal on this ground is warranted.

CONCLUSION AND RELIEF REQUESTED

State Farm respectfully requests that this Court reverse the decision of the Court of Appeals to confirm that the plain language of MCL 500.3145(1) provides that a plaintiff may not file an action for recovery of no-fault benefits more than one year after the date of the accident causing the injury unless the plaintiff provides written notice of that injury as set forth in the statute within one year of the accident.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s Paul D. Hudson

Paul D. Hudson (P69844)
Miller, Canfield, Paddock and Stone, P.L.C.
277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007
(269) 381-7030
hudson@millercanfield.com
Attorneys for State Farm

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